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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,105	08/15/2001	Fred S. Lamb	875.054US1	9991

26191 7590 11/26/2004

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[REDACTED] EXAMINER

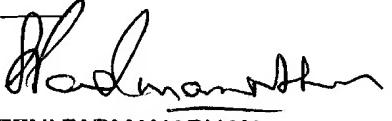
KIM, JENNIFER M

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1617

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/930,105	Applicant(s) LAMB ET AL.	
	Examiner Jennifer Kim	Art Unit 1617	
<b>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</b>			
<p>THE REPLY FILED 02 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>			
<b><u>PERIOD FOR REPLY</u> [check either a) or b)]</b>			
<p>a) <input checked="" type="checkbox"/> The period for reply expires 3 months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>			
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p>			
<p>2. <input type="checkbox"/> The proposed amendment(s) will not be entered because:</p> <ul style="list-style-type: none"> <li>(a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below);</li> <li>(b) <input type="checkbox"/> they raise the issue of new matter (see Note below);</li> <li>(c) <input type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</li> <li>(d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</li> </ul>			
<p>NOTE: _____</p>			
<p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p>			
<p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p>			
<p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.</p>			
<p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p>			
<p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input type="checkbox"/> will not be entered or b)<input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p>			
<p>The status of the claim(s) is (or will be) as follows:</p>			
<p>Claim(s) allowed: _____.</p>			
<p>Claim(s) objected to: _____.</p>			
<p>Claim(s) rejected: <u>22-24, 27-29, 31-35 and 38-43</u>.</p>			
<p>Claim(s) withdrawn from consideration: _____.</p>			
<p>8. <input type="checkbox"/> The drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner.</p>			
<p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). _____</p>			
<p>10. <input type="checkbox"/> Other: _____</p>			
 <b>SREENI PADMANABHAN</b> <b>SUPERVISORY PATENT EXAMINER</b>			

Continuation of 5. does NOT place the application in condition for allowance because: The claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. Applicants argue the Delaney et al reference suggest that tamoxifen may have been the cause of the patient's increased libido, this reference fails to even suggest that tamoxifen might be useful to modulate penile vascular tone in a patient with erectile dysfunction and the onset of increased libido did not occur in Delaney's patients until the patient had been taking tamoxifen for about 4 month. This is not persuasive because Delaney et al. clearly teach that patient treated with tamoxifen significantly enhanced libido and Kifor et al. evidenced the equivalence of increased libido and an improvement in erectile function. Applicant's mechanism of action of tamoxifen modulating vascular tone and reduces penile sympathetic tone does not represent a patentable limitation since it does not alter the fact that the same compound has been previously used to obtain the same pharmacological effects (enhanced erection; increased libido) which would result from the claimed method. Applicants next argue that libido is related to psychological phenomenon whereas erectile dysfunction is a physiological condition. This is not persuasive since it is evidence by Kifor et al. that improved erectile function equates increased in libido. Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.